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PATENT  
ATTORNEY DOCKET NO. 00742/062002

Certificate of Mailing: Date of Deposit: January 28, 2003

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

Elaine Fabrizio

Printed name of person mailing correspondence

Elaine Fabrizio

Signature of person mailing correspondence

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Thomas L. Benjamin	Art Unit:	1632
Serial No.:	09/812,471	Examiner:	Q. Janice Li
Filed:	March 19, 2001	Customer No.:	21559
Title:	DIAGNOSING AND TREATING CANCER CELLS USING MUTANT VIRUSES		

Commissioner for Patents  
Washington, D.C. 20231

PETITION TO WITHDRAW NOTICE OF ABANDONMENT

Under 37 C.F.R. §§ 1.8(b) and 1.181, Applicant hereby petitions to have the Notice of Abandonment that was mailed in connection with the above-captioned case on December 2, 2002 be withdrawn. A copy of the Notice is enclosed. According to the Notice, the application was abandoned under 37 C.F.R. § 1.135 for Applicant's failure to reply to the Office Action that was mailed on March 26, 2002. However, as explained below, a reply was timely filed on April 25, 2002.

The undersigned, Applicant's attorney of record, first became aware of the abandonment on December 3, 2002, during a teleconference with Examiner Li and

submits that this petition to withdraw the Notice of Abandonment is being promptly submitted as required by 37 C.F.R. § 1.8(b)(1).

The following documents are submitted under 37 C.F.R. § 1.8(b)(2) as proof that a reply was timely filed on April 25, 2002:

1. A copy of the reply, including an executed certificate of mailing signed by Mary Jane DiPalma on April 25, 2002.
2. A copy of the postcard that was included with the reply.

Also enclosed are original signed declarations under 37 C.F.R. § 1.8(b)(3) by:

1. Guy Beardsley, attesting on the basis of personal knowledge that the above documents were timely filed on April 25, 2002.
2. Guy Beardsley, attesting on the basis of personal knowledge to the mail procedures in effect on April 25, 2002.

Applicant submits that the reply was timely filed and requests that the Notice of Abandonment be withdrawn.

If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date:

*January 28, 2003*

*Kristina Bieker-Brady*  
\_\_\_\_\_  
Kristina Bieker-Brady, Ph.D.  
Reg. No. 39,109

Clark & Elbing LLP  
101 Federal Street  
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Facsimile: 617-428-7045



21559

PATENT TRADEMARK OFFICE



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,471	03/19/2001	Thomas L. Benjamin	00742/062002	1563

21559 7590 12/02/2002

CLARK & ELBING LLP  
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EXAMINER

LI, QIAN J

ART UNIT PAPER NUMBER

1632

DATE MAILED: 12/02/2002

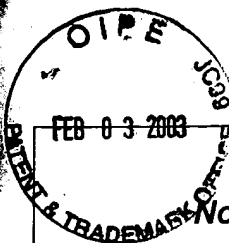
8

Please find below and/or attached an Office communication concerning this application or proceeding.

ACTION DUE Petition to Withdraw  
DUE DATE \_\_\_\_\_  
ESP 2-2-03  
INITIALS J.M.

Abandonment

ACTION DUE Petition to Revoke  
DUE DATE \_\_\_\_\_  
ESP 12-2-03  
INITIALS J.M.



# **Notice of Abandonment**

Application No.

09/812,471

Examiner

Q. Janice Li

Applicant(s)

BENJAMIN, THOMAS L.

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 26 March 2002.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:  
  
A phone call was made to Kristina-Bieker-Brady on 11/20/02 as an attempt to inquire the status of the case, which reached the voice mail of Ms Bieker-Brady. No response was received.

ANNE M. WEHBE' PH.D  
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

**\*\*PROSECUTION\*\***

PATENT

ATTORNEY DOCKET NUMBER: 00742/062002

The U.S. PTO date stamp sets forth the date of receipt of:

Applicant/Patentee: Thomas L. Benjamin

Serial/Patent Number: 09/812,471

Filed/Issued: March 19, 2001

Title: DIAGNOSING AND TREATING CANCER CELLS USING MUTANT VIRUSES

<input type="checkbox"/> Transmittal Letter	Pages: _____	<input type="checkbox"/> Declaration & POA	Pages: _____
<input type="checkbox"/> Notice of Missing Parts	Pages: _____	<input type="checkbox"/> Assignment & Cover Sheet	Pages: _____
<input checked="" type="checkbox"/> Reply to Missing Parts	Pages: _____	<input type="checkbox"/> Change of Address	Pages: _____
<input type="checkbox"/> Reply to Examiner's Action	Pages: <u>1</u>	<input type="checkbox"/> Small Entity Statement	Pages: _____
<input type="checkbox"/> Extension of Time	Pages: _____	<input type="checkbox"/> Preliminary Amendment	Pages: _____
<input type="checkbox"/> Notice of Appeal	Pages: _____	<input type="checkbox"/> IDS	Pages: _____
<input type="checkbox"/> Appeal Brief	Pages: _____	<input type="checkbox"/> Cited References	Pages: _____
<input type="checkbox"/> Drawings Formal/Informal	Pages: _____		Number: _____
<input type="checkbox"/> M-Fee Payment	Pages: _____		
<input type="checkbox"/> Issue Fee Payment	Pages: _____	<input type="checkbox"/> Other _____	Pages: _____
<input type="checkbox"/> Check	\$: _____		
		<input type="checkbox"/> Other _____	Pages: _____
<input type="checkbox"/> Other _____			

Atty/Secy: KBB/mjd Client/Matter Name: Harvard/062002 Pages: \_\_\_\_\_  
Date: 4/25/02

